Supreme Court, U.S.
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Nos. 95-1425 & 95-1460

In The

Supreme Court of the United States

October Term, 1995

LUCIOUS ABRAMS, JR., et al., and
THE UNITED STATES OF AMERICA,

Appellants,

v.

ZELL MILLER, et al.,

Appellees,

and

DAVIDA JOHNSON, et al.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Georgia

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether the District Court abused its discretion in adopting a remedial congressional redistricting plan, after the General Assembly failed to adopt a new plan, in light of the Court's findings that the old plan was fraught with constitutional defects?

2. Whether the Voting Rights Act mandated that Georgia have two majority-minority congressional districts?

3. Whether the District Court's plan adequately satisfied one-person/one-vote requirements?

PARTIES TO THE PROCEEDING

The instant movants are the Governor of the State of Georgia, Zell Miller; Lieutenant Governor of the State of Georgia, Pierre Howard; and the Secretary of State of the State of Georgia, Lewis Massey. These individuals were defendants below, and they are appellees here. Other appellees include the plaintiffs below, Davida Johnson, Pam Burke, Henry Zittrouer, George L. DeLoach, George Seaton, James Rhodes, Gary Heard, Daniel Moorel, and Donald Shirah. Appellants in Case No. 95-1425 were intervenor/defendants below, and they are Lucious Abrams, Jr., Rev. G. L. Avery, William Gary Chambers, Sr., and Karen Watson. In Case No. 95-1460, the appellant United States of America was an intervenor/defendant below.

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MOTION TO AFFIRM

Movants are Georgia's Governor, Lieutenant Governor, and the Secretary of State – Zell Miller, Pierre Howard, and Lewis Massey, respectively. They were defendants below, and they are appellees here. They respectfully move this Court to affirm the order and judgment of the three-judge District Court in this case.

Movants submit that this case is an appropriate one for summary affirmance because the appellants in both Case No. 95-1425 and Case No. 95-1460 have failed to show that the District Court acted erroneously or abused its discretion. Appellants' jurisdictional statements do not even attempt to show that the District Court acted erroneously *based on the evidence that was before it.* Rather, appellants' contentions – and even their statement of the case – rely on a supposed version of the facts that they have alleged for several years, but which were not found by the Court and which were unsupported by the evidence. Appellants' jurisdictional statements also rely upon legal theories unsupported by the decisions of any court, including theories which reasonably cannot be maintained in light of this Court's original decision in this case, *Miller v. Johnson*, 132 L.Ed.2d 762 (1995).

STATEMENT OF THE CASE

Plaintiffs filed their complaint challenging Georgia's eleventh congressional district on *Shaw* grounds on January 13, 1994. The trial on the merits of their complaint was held July 21-28, 1994, and the District Court entered judgment in favor of the plaintiffs on September 12, 1994.

That decision was affirmed in all regards by this Court in *Miller v. Johnson, supra.*

Promptly after this Court's decision, the Governor called a Special Session of the Georgia General Assembly in an effort to adopt remedial legislation. Pursuant to the Governor's call, the General Assembly met from August 14, 1995 to September 12, 1995. The charge to the General Assembly was limited to reapportionment. Because Georgia's House and Senate plans were drawn under the same constraints and with the same purposes as was the State's congressional plan, which had been held unconstitutional in *Miller*, the General Assembly undertook to reapportion the State House and Senate as well as Georgia's congressional districts.

New House and Senate plans were, in fact, adopted at the Special Session and signed into law by the Governor. The Georgia House and Senate were unable to agree, however, on a new congressional reapportionment plan. The State advised the District Court of its deadlock, and the Court then proceeded to conduct a remedial hearing and fashion a remedial congressional plan.

The *Johnson* plaintiffs also expanded their challenge, after this Court's *Miller* decision, to include Georgia's second congressional district. That district suffered the same ACLU-DOJ dictated origins as did the eleventh congressional district that was struck down in *Miller*. The District Court determined that the second congressional district was also unconstitutional, a finding unopposed

by the Department of Justice.[1] In finding the second district unconstitutional, the District Court had before it extensive factual stipulations of the parties, as well as the pertinent findings from its earlier trial regarding the eleventh congressional district. (U.S. J.S. 32a) Based on all of the evidence, the Court found as follows:

> After a trial on the merits and in the light of *Miller v. Johnson*, 115 S.Ct. 2475 (1995), we find and conclude, that race, namely, the intention to create a congressional district in which black persons would be a majority of the voting age population, was the overriding and predominant factor motivating the placement of the second district's boundaries. We find that the boundary line for the district was consistently drawn to keep potential black voters in the district and to keep potential white voters out of the district. The district was drawn to segregate voters according to their race; so, it is an unlawful district.
>
> Twelve of the second congressional district's thirty-five counties were split, and to draw the second congressional district as it is now also required the splitting of twenty-eight precincts. In addition, the boundary of the second district splits the cities of Columbus, Macon, Albany, Manchester, Roberta, Byron, Centerville, Warner Robins, Ft. Valley, Perry, Cordele, Leesburg, Moultree, and Valdosta.

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[1] None of the private intervenor-defendants lived in the second district, and they thus lacked standing to participate in the District Court's determination of that issue under this Court's *Hays v. Louisiana*, 132 L.Ed.2d 635 (1995) decision.

Before 1992, the second district included no portions of the City of Columbus or portions of the City of Macon. Before 1992, the second congressional district contained no split counties.

We find that the sole reason for splitting precincts was racial and that the predominant reason for splitting the counties and cities was racial as well.

Georgia's second district makes use of narrow land bridges to connect parts of the district and involves a number of irregular appendages. These features affect the district's compactness adversely and, in some instances, make parts of the district only barely contiguous. We find that the predominant reason for these irregular lines is race; most can be explained on no other basis.

Linda Meggers, Director of Reapportionment Services for the Georgia General Assembly, was qualified as an expert witness. She testified that it was not feasible to create a majority-minority district in the second congressional district without including the black population centers in Columbus and Muscogee County, Albany and Dougherty County, and Macon and Bibb County. She further testified that, in drawing the second congressional district, she – we find her to have been the chief draftsperson for the District – followed the "Max-Black Plan," as espoused by the ACLU, to the same degree to which she followed it in drawing the eleventh congressional district. The Max-Black Plan's purpose was to maximize black voting strength in certain congressional districts by making the racial composition of those districts the overriding consideration in their design. . . .

> A comparison of maps depicting the second district's twelve split counties with maps showing the concentration of black residents in the same counties proves that the drawing of Ceorgia's second congressional district was motivated predominantly by racial considerations. Put differently, the line was drawn to put black voters in the second district and to keep white voters out. (U.S. J.S. 33a-35a) (footnotes omitted)

In conclusion, the District Court held that, while the second district differed in some respects from the eleventh, those differences were "not significant enough to make the second district constitutional." (U.S. J.S. 36a)

> Nothing in the State's argument changes the fact that the General Assembly was predominantly motivated by race in its drawing of the second congressional district. The sections of the district's boundary that were drawn for racial reasons are substantial in terms of both distance and population affected. . . .
>
> Because race was the overriding and a predominantly motivated factor in designing the second congressional district, the District can be upheld only if it survives strict scrutiny. (U.S. J.S. 37a)

The trial court found there was no compelling justification for the race-based districting presented by the second district, just as it, and this Court, had found to be the case with the eleventh district.

It was in this context that the District Court was required to impose a congressional reapportionment remedy. The State's existing plan had not been held unconstitutional in just one or two small respects. Rather, two

of the State's eleven districts had been invalidated, and they had been *completely* invalidated as being race-based. Furthermore, because the second district was located in south-west Georgia and the eleventh district was located in east-central Georgia, the Court was necessarily faced with the task of fashioning a remedy to an existing plan that involved unconstitutional district lines that literally were located across the entire State.

ARGUMENT

I. APPELLANTS HAVE FAILED TO SHOW THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN FASHIONING A REMEDY THAT SIGNIFICANTLY CHANGED GEORGIA'S UNCONSTITUTIONAL PLAN.

Appellants complain that the extent of change reflected by the District Court's remedy, when the new plan is compared to the original plan, exceeds the limits permitted a court in equity. But in advancing this argument, appellants cannot cite a shred of evidence in their support. Neither do they point to any way in which the District Court might have been clearly erroneous in its findings. Rather, they simply make the bald assumption that any plan that contains significant changes from the old plan -- the *unconstitutional* old plan – must automatically fail to be a "minimum change" plan and must therefore violate the constraints of *Upham v. Seamon*, 456 U.S. 37 (1982), *White v. Weiser*, 412 U.S. 783 (1973), and other such cases. Appellants' assumption is seriously misplaced.

The eleventh congressional district contained parts of three major urban counties: Chatham, Richmond and DeKalb. The great bulk of the population of the district came from these three counties. Each of them was split, more or less along racial lines, because of the kind of racial considerations that this Court found unconstitutional.

This Court has always held that a court-ordered remedy must be sufficiently broad to fully eradicate the underlying constitutional violation. See, e.g., *Milliken v. Bradley*, 433 U.S. 267 (1977); *Swann v. Charlotte-Mecklenburg Board of Ed.*, 402 U.S. 1 (1971). In applying this Court's mandate, the District Court eliminated those aspects of the eleventh district that were determined to be based predominantly on race. Because race had been found to be the overall driving force in the eleventh congressional district – dictating its broad architecture as well as individual county splits – and because the three major population areas in the district had been split on the basis of race, any remedial plan that eliminated these constitutional violations would necessarily look quite different than the old plan. This the appellants ignore.

Moreover, while the remedy necessitated by the eleventh district alone would be extensive, the Court's remedy also had to address the unconstitutional second congressional district. As the trial court held:

> After a trial on the merits and in the light of *Miller v. Johnson*, 115 S.Ct. 2475 (1995), we find and conclude, that race, namely, the intention to create a congressional district in which black persons would be a majority of the voting age

> population, was the overriding and predominant factor motivating the placement of the second district's boundaries. We find that the boundary line for the district was consistently drawn to keep potential black voters in the district and to keep potential white voters out of the district. The district was drawn to segregate voters according to their race; so, it is an unlawful district. (U.S. J.S. 31a) (footnote omitted)

The remedy for the second congressional district, too, necessitated significant changes in Georgia's congressional plan. Twelve separate counties in the second congressional district were split. It is undisputed that they were all split on the basis of race. These race-based splits involved every significant city in the second district. Indeed, the boundary of the district weaved in and out of counties in order to pick up even relatively minor black populations in small towns, all for the purpose of trying to increase the black percentage in the district. (U.S. J.S. 33a-35a)

In devising a remedy for the eleventh and second congressional districts, the District Court eschewed race-based splitting of counties. In so doing, the remedial plan necessarily differed in appearance from what had been forced upon the State of Georgia by the Department of Justice during the Section 5 process in 1991 and 1992. If the Constitution prohibits splitting counties based on race, there was simply little left of either the second or eleventh congressional districts upon which to base a remedial plan. The rule of *Upham v. Seamon* thus had little practical impact in conforming the remedial plan to the original one. There was little left to serve as the core of districts that the Court could use in fashioning a remedy.

The constitutional violations were too pervasive. Appellants ignore these facts.

Appellants also ignore the fact that the *Upham* rule does not fit the circumstances of this case as it did the original Texas litigation where the case arose. That is true because the plan adopted by the Georgia General Assembly, which was struck down, did not express the policy choices of the State. Rather, that plan had been found by both the District Court and this Court to have been dictated largely by the DOJ's Section 5 unit. The plan more reflected the policy choices of the DOJ and the ACLU representatives who worked with the federal government than it did Georgia's legislators. Based on all of the evidence before it, the District Court concluded:

> At first glance it appears that, in remedying Georgia's constitutionally infirm congressional districting plan, we are faced with the same task as the *Upham* court, which would entail making only those changes necessary to bring the current plan into constitutional compliance. However, this Court's remedial task differs from that of the *Upham* courts because Georgia's current plan was not the product of Georgia's legislative will. Rather, the process producing Georgia's current plan was tainted by unconstitutional DOJ interference. *See Johnson* I, 864 F. Supp. at 1367-68. By virtue of its unconstitutional origin, Georgia's current congressional plan cannot form the basis for the remedy we now construct because it does not represent the goals of Georgia's historic policies nor the state legislature's true intent. (U.S. J.S. 4a)

. . . .

> . . . Using the current plan as the basis for the remedy would, in effect, validate the DOJ's constitutionally objectionable actions. Thus, we cannot use Georgia's current plan as a surrogate for the legislature's reapportionment policies and goals. (U.S. J.S. 5a)

Appellants do not challenge these findings as clearly erroneous, nor could they based on the record in this case.

Indeed, appellants' contention that the Court's remedial changes should have been more minimal ignores the fundamental premise of the finding of unconstitutionality. Georgia's two congressional districts were not invalidated because of some minor, technical deviation from a constitutional ideal. To the contrary, they were held to be unconstitutional because their *predominant purpose* was an illegal, unconstitutional one. It should be no surprise, where the fundamental purpose of a district's configuration is unconstitutional, that the remedy required would bear marked differences from the stricken plan. Any other result would, as the District Court noted, perpetuate the unconstitutional purposes.

Appellants' complaint that the District Court ignored Georgia's traditional districting principles, and thus violated *Upham*, also disregards what the District Court actually did in this case. The State's traditional districting principles were reviewed by the trial court in detail. These principles were then followed to the extent possible in fashioning the remedy. (U.S. J.S. 12a-18a)

Appellants do correctly state that they offered "remedial plans" to the District Court that would have changed the old plan less than did the Court's ultimate remedy.

But appellants completely failed to show that their plans would have remedied the constitutional defects found by the District Court and this Court. To the contrary, the remedial plans offered by appellants (and the incumbent congressional representatives, acting as amici) reflect much of the same architecture and line drawing difficulties that led to the declaration of unconstitutionality.[2]

II. THE REMEDIAL PLANS ADVOCATED BY APPELLANTS WERE NOT MANDATED BY SECTION 2 OR "VOTE DILUTION" PRINCIPLES

Appellants assert that the District Court's remedial plan "dilutes" minority voting strength. But the way appellants use the term "vote dilution" bears no relation to this Court's use of that term under Section 2 or any other law. To the contrary, appellants speak of "vote dilution" in the same way that led to the initial drawing of unconstitutional plans in Georgia. Then, the ACLU and the DOJ insisted on certain minority population percentages in various districts, and they insisted that congressional lines be drawn as necessary in order to achieve those percentages. Anything less was deemed "dilution." *Johnson v. Miller* I, 864 F.Supp. at 1361-67.

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[2] Appellees would also note that, while the appellants assert that the District Court disregarded the legislature's earlier actions in 1991 and 1992, the facts are to the contrary. The District Court expressly found that it was following those plans, where possible, and where legislative choices could be separated from the unconstitutional purposes dictated by the Department of Justice: (U.S. J.S. 13a & note 9) Once again, appellees would note that no clearly erroneous challenge has been made to this finding.

Appellants' argument remains the same today. They assume, for example, that there must have been "vote dilution" because two of the three majority black congressional districts have been eliminated by the District Court's remedial plan. In so arguing, however, appellants ignore a fundamental problem: those districts originally arose solely by virtue of race-based line drawing. Their demise upon the adoption of a constitutional remedial plan should be no surprise.

Had it been possible to draw another reasonable, compact majority-minority district, the District Court was inclined to do so. The trial court found that no such compact black-majority district could be reasonably drawn, however, and that is why there is none.

> Ample evidence has been presented during the two trials to enable the Court to determine that Section 2 does not require creation of a second majority-minority district in Georgia – due primarily to the geographic dispersion of its minority population and lack of any significant vote polarization. Creating a second majority-minority district would also violate the Supreme Court mandate under which we now operate because *Johnson* II held that the VRA cannot be applied to reach an unconstitutional result.
>
> Analysis of a racial map of Georgia reveals that the state's minority population is widely dispersed. In fashioning a remedy, we considered the possibility of creating a second majority-minority district and concluded that to do so would require us to subordinate Georgia's traditional districting policies and consider race predominantly, to the exclusion of both constitutional norms and common sense. Such a

> plan would directly contravene the Supreme Court's holding in *Johnson* II – that race cannot predominate in the redistricting context absent a compelling justification for it. 132 L.Ed.2d at 782. Nonracial factors do not support creation of a second majority-minority district largely because Georgia's minority population is not geographically compact. *DeGrandy*, 114 S.Ct. at 2655. Creating a second majority-minority district would require this Court to engage in the unconstitutional racial gerrymandering characteristic of the plan we now replace. (U.S. J.S. 20a-21a) (footnote omitted).

What the Court did in fashioning its remedy here was not "vote dilution," as a matter of law, as that term has been explicated by any Justice of this Court in any prior case. See, e.g., *Johnson v. DeGrandy*, 129 L.Ed.2d 775 (1994); *Thornburg v. Gingles*, 478 U.S. 30 (1986).

Finally, in making their claim of vote dilution, the Abrams appellants argue that they were not allowed a hearing on their dilution claim. (Abrams J.S. 22) That contention is incorrect. As a matter of fact, the Court allowed all parties – including the intervenor-appellants – a full hearing on the issue of remedy. That hearing took place October 30-31, 1995. There were no restrictions placed on the evidence or arguments one could offer at that time.[3] If intervenors claimed that Section 2 vote

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[3] One witness was excluded when offered on behalf of certain amici who had been invited to participate because that witness had not been previously identified. In fact, he was substituted at the last minute for another witness who had been impeached during his pre-hearing deposition.

dilution principles demanded that a certain kind of reapportionment plan be adopted, their opportunity to present evidence to that effect was at that time (as well as at the merits trial itself). Their failure to present such evidence is their failure, not the Court's "refusal" to hear them. As the Court's order expressly notes, appellants did advance these claims at the remedy hearing. They were simply rejected, based on the evidence.

> During the remedy phase of the hearing, a significant portion of the argument centered on whether the Court's remedy would be required by Section 2 to contain two majority-minority districts. We have considered Section 2 and the case law construing it, and we conclude that two majority-minority districts are not required by Section 2 because including two such districts would violate *Johnson* II's principles. (U.S. J.S. 19a)

III. THE DISTRICT COURT'S REMEDY WAS NEITHER RETROGRESSIVE NOR VIOLATIVE OF SECTION 5 OF THE VOTING RIGHTS ACT.

The Abrams appellants contend that the District Court's remedial plan is "retrogressive" and that it violates Section 5. (Abrams J.S. 19-20) Putting aside the question of whether a Court-ordered plan is even subject to Section 5 retrogression considerations, *Connor v. Johnson*, 402 U.S. 690, 691 (1971), appellants' contention is misplaced. They make two arguments. First, they claim that, since the ten member reapportionment plan for Georgia under the 1980 census contained one black majority district out of ten, a new plan could never have

less than ten percent majority black districts. Since the Court's plan has one majority-minority district out of eleven, that being nine percent, appellants contend that the plan is fatally retrogressive. Alternatively, they argue that the "benchmark" for Section 5 should be the initial eleven district plan that contained two majority black districts that the General Assembly enacted in 1991. This plan was the one that never went into effect because of DOJ objections pursuant to Section 5.

At the outset, appellants appear to concede at least one obvious point, that the 1992 plan that has been held unconstitutional – and which contained three majority black districts – is not an appropriate Section 5 benchmark. Since that plan is illegal, and since the number of black districts was a direct product of the unconstitutional conduct of the DOJ, this should be obvious. But for the same reason, any use of the 1991 plan must fail. The majority black eleventh congressional district in that plan suffered the same infirmity as the final 1992 plan. Moreover, since the plan never went into effect because of the Section 5 objection, it was never "legally enforceable" and could not constitute a benchmark under the DOJ's Section 5 regulations. See 28 C.F.R. § 51.54(b)(1) and Order at U.S. J.S. 27a & note 20.

To argue that the "ten percent" 1982 plan created a benchmark that was violated here would be to put form far above substance. While it is true that Georgia's population did increase sufficiently to allow for the addition of a new congressional representative, it was hardly "retrogressive" to devise a new plan that continued to have one majority-minority congressional district in the delegation.

Moreover, appellants' assumption that the Section 5 benchmark standard imposes an iron-clad, impenetrable barrier is misplaced. Because the District Court found that no additional majority-minority congressional districts could be drawn that were reasonably compact, and none could be drawn without unconstitutional gerrymandering as a result, Section 5 could not possibly mandate the drawing of such a district. See, e.g., *City of Richmond v. United States*, 422 U.S. 358 (1975) (holding that even a retrogressive change is permissible under Section 5 if there are good governmental reasons warranting the change). To suggest that Section 5's retrogression standard demands that a State engage in unconstitutional redistricting is a contention without merit. To so construe Section 5 would render it unconstitutional.

IV. THE DISTRICT COURT'S PLAN SATISFIES ONE PERSON/ONE VOTE REQUIREMENTS.

Appellants assert that the lower Court's remedial plan violates one person, one vote principles. This contention is frivolous.

First, the population deviation among the districts is *de minimis*. The plan "has an overall population deviation of .35%, and an average deviation of .11%." (U.S. J.S. 6a) This extremely small deviation was justified "by the Court's adherence to Georgia's traditional districting principles and [other] unique factors. . . . " (U.S. J.S. 8a) For example, any further lowering of the population deviation would have required splitting political subdivisions that have historically been intact. There are sound,

nonracial reasons for keeping those jurisdictions together. (U.S. J.S. 9a-12a)

Appellants assert that another plan with a lower overall deviation (0.19%) was offered by the Department of Justice, and the Abrams appellants contend that "given modern computer technology, there is no reason why there should be any deviation in a court ordered congressional redistricting plan." (Abrams J.S. 24) Appellants' assertions ignore the facts of the case, the law, and common sense.

The District Court explicitly found that no other plan presented to it – *that was constitutional* – had a lower population deviation. That includes, of course, the plan offered by the Department of Justice, which for the most part sought just to perpetuate the existing unconstitutional districts. As the Court found:

> The resultant remedy contains a lower deviation than the current Georgia plan, the 1982 plan, and any other plan presented to the Court which was not otherwise constitutionally defective. (U.S. J.S. 7a-8a)

The Court specifically addressed the DOJ plan, stating:

> The DOJ presented a plan containing a slightly lower overall deviation than the Court's plan. However, its plan split numerous counties outside of the metropolitan Atlanta area, apparently for racial reasons. (U.S. J.S. 8a, note 4)

In truth, the District Court made extensive efforts to balance the populations of the districts as precisely as could be expected, consistent with some degree of deference to local governmental and electoral considerations.

No case supports the appellants' assertion that the district lines here might be unconstitutional because of population deviations.

Indeed, common sense surely must preclude the appellants' argument on this point. We are now closer to the census for the year 2000 than we are to the 1990 census. Without doubt, there have been substantial population changes over the past six years throughout Georgia. Georgia is one of the fastest growing states in the country, with its growth being especially rapid in the metropolitan areas. Even exact mathematical precision in a reapportionment plan based on the 1990 census necessarily must have significant current deviations *today*, in some cases surely surpassing ten percent. Under these circumstances, in between censuses as we are, it would be absurd to criticize a District Court's plan that had a total population deviation of .35% because "modern computer technology" could reduce the number further. Modern computer technology cannot, in fact, make the number any lower, as a practical matter, because it cannot account in any way for the tremendous population changes that have occurred since 1990, and which are continuing to occur today.

V. THE UNITED STATES' ARGUMENT THAT A NEW REAPPORTIONMENT PLAN SHOULD BE PUT INTO EFFECT FOR THE 1996 ELECTIONS IS IRRESPONSIBLE.

Appellant United States contends in its jurisdictional statement that a summary reversal may be appropriate in this case with this Court directing the District Court to

"put in place a new plan . . . that contains two compact majority-minority districts." (U.S. J.S. 27) Incredibly, the United States further contends that this should be done before the 1996 elections, while recognizing that the political process is well under way, that qualifying is scheduled to begin in approximately a week, and that elections would have to be postponed if the requested relief were granted. (U.S. J.S. 26) None of the United States' extraordinary request for such immediate relief need be reached, of course, since appellants' contentions on the merits are seriously misplaced.

Furthermore, appellees must point out that – even if there were some merit to the appellant's basic contentions – its request for such emergency relief is irresponsible. For example, the *United States fails to mention that it waited until the very end of the appeals period in which to file its jurisdictional statement.* The United States also fails to mention that it made no request by way of motion to this Court for a stay or an injunction pending appeal prior to filing its jurisdictional statement. Abrams appellants did make such a motion. It was opposed by the present appellees, and that motion was denied by the Supreme Court on February 6, 1996. See *Abrams v. Johnson*, App. No. A-624, 133 L.Ed.2d 833 (1996).

It is little less than shocking that the Solicitor General would request that this Court impose on a State such radical and disruptive relief at the very last minute in its election cycle, when the United States itself has been so unjustifiably dilatory.

CONCLUSION

For the foregoing reasons, movants Miller, Howard, and Massey respectfully request that the judgment of the District Court be summarily affirmed.

Respectfully submitted,

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